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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/594,070
Filing Date: June 14, 2000
Appellant(s): OEHRKE, TERRY L.

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Technology Center 2100

Mark C Young
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/09/2006 appealing from the Office action mailed 6/06/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

6,438,583	McDowell	8-2002
6,130,875	Doshi	10-2000
5,974,122		10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1-4, 7-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,438,583 by McDowell et al. in view of US Patent No. 5,974,122 by Nelson et al.

In claim 1, McDowell teaches about a method for providing a messaging service on a computer network, the method comprising the steps of (Fig 1):

- (a) routing a message to a messaging server “old ISP email server”(Col 1, lines 45-60);
- (b) providing the message to a relay server “re-route server” when the message is undeliverable to the messaging server (Col 1, lines 45-60); and

But fails to teach (c) re-routing the message from the relay server to the messaging server when operational.

The concept of re-routing a message to relay server “message platform” after a failure to deliver to a destination and then delivering when the destination operable is well known in the art as disclosed by Nelson (Fig 4) (Col 6, lines 5-25). McDowell indicated that there was a need to prevent message from being undeliverable “bouncing” (McDowell Col 1, lines 30-40). Nelson teaches a improve way of delivery message when the destination is not available (Nelson Col 6, lines 5-25). With this combination, the problem of bouncing will be eliminated and the delivery of important messages will be guaranteed. It would have been obvious at the time of the invention for some of ordinary skill to provide a rerouting scheme to insure that important messages are delivered to their destination despite a failure occurring at the destination.

In claim 2, McDowell combines with Nelson, teaches about a method of Claim 1 further comprising:

(d) invoking another messaging server “new ISP email server” when the message is undeliverable to the messaging server “old ISP email server” in step (c) (McDowell Col 1, lines 45-60) (Fig 1).

In claim 3, McDowell combines with Nelson, teaches about a method of Claim 2 further comprising:

(e) routing the message to the other messaging server of step (d) (McDowell Col 1, lines 45-60), (Fig 1).

In claim 4, McDowell combines with Nelson, teaches about a method of Claim 3:

further comprising (f) storing the message (McDowell Col 7, lines 1-10); and wherein step (e) comprises changing server information of the stored message (McDowell Col 7, lines 1-10).

In claim 7, McDowell combines with Nelson, teaches the method of Claim 1 further comprising:

(d) sending the message to the messaging server in response to step (c) (Covered in claim 1).

In claim 8, McDowell combines with Nelson, teaches about a method of Claim 3 further comprising:

(f) sending the message to the other messaging server in response to step (e) (McDowell Col 1, lines 45-60).

In claim 9, McDowell teaches about a computer network for providing a messaging service, the network comprising:

a messaging server “old ISP email server” (McDowell Col 1, lines 45-60);
a DNS server operable to route a message to the messaging server (McDowell Col 5, lines 20-40) (McDowell Col 8, lines 1-15) (The DNS function is incorporated in the re-route server); and

a relay server “re-route server” operably connected to the DNS server and the messaging server, the DNS server operable to provide the message to the relay server when the messaging server is inoperable such that the message is undeliverable to the messaging server (McDowell Col 8, lines 1-15);

wherein the relay server is operable to re-route the message from the relay server to the messaging server when operational (Covered in claim 1).

In claim 10, McDowell combines with Nelson, teaches about a network of Claim 1 further comprising:

another messaging server “new ISP email server”, the other messaging server invoked by the relay server when the messaging server “old ISP email server” is inoperable such that the message is undeliverable to the messaging server in response to the re-routing (McDowell Col 1, lines 45-60), (Fig 1).

In claim 11, McDowell combines with Nelson, teaches about a network of Claim 10 wherein the relay server is operable to route the message to the other messaging server (McDowell Col 1, lines 45-60), (Fig 1).

In claim 12, McDowell combines with Nelson, teaches about a network of Claim 11 further comprising:

a storage device operably connected to the relay server and the other messaging server, the message being stored in the storage device (McDowell Col 7, lines 1-10); and wherein the relay server is operable to change server information of the stored message to route the message to the other messaging server (McDowell Col 7, lines 1-10).

In claim 15, McDowell combines with Nelson, teaches about the network of Claim 9 wherein the relay server is operable to send the message to the messaging server in response the re-routing (McDowell Col 1, lines 45-60).

In claim 16, McDowell combines with Nelson, teaches about a network of Claim 11 wherein the relay server is operable to send the message to the other messaging server in

response to routing the message to the other messaging server (McDowell Col 1, lines 45-60),
(Fig 1).

In claim 17, McDowell combines with Nelson, teaches about a network of Claim 9 wherein the messaging server and the relay server are within a first data center (Fig 1).

In claim 18, McDowell combines with Nelson, teaches about a network of Claim 10 wherein the messaging server and the other messaging server are in first and second data centers, the first data center remote from the second data center (Fig 1).

In claim 19, McDowell combines with Nelson, teaches about a network of Claim 9 wherein the relay server is operable to invoke a process to create another messaging server with a same name and IP address (McDowell Col 5, lines 15-40).

Claim 5-6, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,438,583 by McDowell et al. and US Patent No. 5,974,122 by Nelson et al in view of US Patent No. 6,182,224 by Doshi et al.

In claim 5 McDowell and Nelson teach all the limitation except the action of periodically attempting to deliver a message to the message server.

Doshi teaches about a messaging system in which a destination node is checked periodically to determine if destination node is ready to receive a message (Col 15, line 50 -Col 16, line 15). It would have been obvious at the time of the invention for some one of ordinary skill to periodically poll a destination server to insure that it is available to receive a message.

In network operation, there are different types of failures. Some failures are more permanent while others are temporary. In the case of a temporary failure, service can be reinstated as soon as the destination is available without going through the complication of

rerouting. To avoid the complication of rerouting, the destination server is poll periodically for predetermine period until there is some certainty that the failure is serious. In this scenario, a more complex rerouting is needed to deliver the message.

In claim 6 and 14, McDowell combines with Nelson and Doshi, teaches about a method of Claim 5 further comprising:

(d) invoking another messaging server when the message is undeliverable to the messaging server in step (c) (McDowell Col 1, lines 45-60).

In claim 13 the network of Claim 9 wherein the relay server is operable to periodically attempt delivery of the message from the relay server to the messaging server (Covered in claim 5).

In claim 14, McDowell combines with Nelson and Doshi, teaches about a network of Claim 13 wherein the relay server is operable to invoke a process to create another messaging server when the message is undeliverable to the messaging server in response to the re-routing (Col 1, lines 45-60), (Fig 1).

(10) Response to Argument

In response to the argument that there is no suggestion to combine the McDowell and Nelson references. The common goal of both references is to ensure that a message is delivered to its rightful owner despite changes or failures in a network (See abstract for both prior arts). The Harry Newton, Newton's Telecom Dictionary, February 2002, CMP Books, 18th Edition, Page 659 define a server as:

2. Software definition of server: A server is a program, which provides some service to other (client) programs. The connection between a client program and the server program is

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traditionally by message passing, often over a local area or wide area network, and uses same protocol to encode the client's requests and the server's responses. Any given program may be capable of acting as both a client and a server, perhaps switching its role based on the nature of the connection. The terms "client" and "server" simply refer to the role that the software program performs during a specific connection. Similarly, any given server may function as an origin server, a proxy server, a gateway server, or a tunnel, modifying its behavior based on the specific nature of a given request from a client.

A facsimile comprise of a receiving program (server) that monitors a message in an electrical signal form and converts it to another message form, which allows the message to be print by a printer program (client). The action of receiving and converting, provide the service that a printer program (client) requires in order to print a fax. This feature of the receiving program is consistent with the limitation of message server. As taught in Nelson, a failure to deliver a message to a facsimile (message server) result in the message being temporary stored on a message platform (relay server) until the facsimile is available for delivery (Col 6, lines 5-25). Being that both references are directed to the same kind of problem and being analogous to the network art, the combination is valid.

In response to the argument that the limitation of "another message server" is not taught by prior art. McDowell teaches about an Email that is undeliverable to an old ISP (message server) due to the fact that the recipient of the intended message no longer has an active account. A re-router server (relay server) is used to locate a new ISP (another messaging server) (Col 6, lines 50-65). This feature in light of the Nelson reference at the time of the invention would have been obvious to any one of ordinary skill in the art.

The limitation of “undeliverable” as claimed does not limit the claim to a non-operational state as argued by applicant. The claims being presented broadly include the case of McDowell in which a message is undeliverable due to the client no longer being a member of the ISP (Col 6, lines 50-65).

In response to the argument that the combination of Doshi with McDowell and Nelson is not valid. Doshi invention provides the means of network recovery after a network failure (Col 2, lines 25-40) (Col 5, lines 50-60). The problem of network failure inadvertently lead to the case of a message not being delivered to its destination as in McDowell and Nelson. The limitation of “when operational” is directly related to the process of recovery as taught by Doshi. The backoff process of finding out if a path exists in order to determine if the message can be delivered to the destination is periodic and is taught by Doshi (Col 15, lines 55-65).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

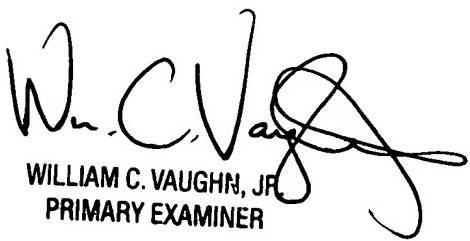
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

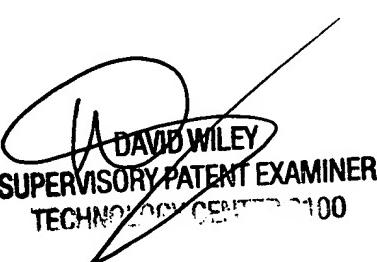
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